

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service:	)	
	)	
	)	
	)	

**COMMENTS OF WESTERN WIRELESS CORPORATION**

Gene A. DeJordy  
Vice President of Regulatory Affairs  
WESTERN WIRELESS CORP.  
3650 131st Ave., S.E., Ste. 400  
Bellevue, WA 98006  
(425) 586-8700

Michele C. Farquhar  
David L. Sieradzki  
HOGAN & HARTSON LLP  
555 Thirteenth St., N.W.  
Washington, D.C. 20554  
(202) 637-5600

Mark Rubin  
Director of Federal Government  
Affairs  
WESTERN WIRELESS CORP.  
401 Ninth St., N.W., Ste. 550  
Washington, D.C. 20004  
(202) 654-5903

Its Counsel

April 14, 2003

## TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION AND EXECUTIVE SUMMARY .....	1
I. ADDING AN EQUAL ACCESS REQUIREMENT IN THE UNIVERSAL SERVICE DEFINITION WOULD HARM CONSUMERS .....	3
II. ADDING EQUAL ACCESS TO THE DEFINITION WOULD VIOLATE THE PRINCIPLE OF COMPETITIVE NEUTRALITY .....	7
III. THE ACT DOES NOT AUTHORIZE THE COMMISSION TO IMPOSE EQUAL ACCESS REQUIREMENTS ON WIRELESS CARRIERS .....	8
A. Equal Access Does Not Satisfy the Section 254(c)(1) Criteria for the Definition of Universal Service .....	8
1. Equal Access is Not Essential to Education, Public Health, or Public Safety .....	9
2. Equal Access has Not, Through the Operation of Market Choices by Customers, been Subscribed to by a Substantial Majority of Residential Customers.....	10
3. Implementing Equal Access is Not Consistent with the Public Interest, Convenience, and Necessity .....	10
B. Imposing Equal Access Requirements on Wireless Carriers is Contrary to the Mandate of Section 332(c)(8).....	11
CONCLUSION.....	12
Attachment 1: “An Economic Evaluation of the Possible Modification to the Definition of Supported Universal Services	
Attachment 2: <i>Federal-State Joint Board on Universal Service; Review of the Definition of Universal Service</i> , CC Docket No. 96-45, Reply Comments of the Competitive Universal Service Coalition (filed Jan. 4, 2002).	

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on Universal	)	CC Docket No. 96-45
Service	)	
	)	
	)	
	)	

**COMMENTS OF WESTERN WIRELESS CORPORATION**

Western Wireless Corporation (“Western Wireless”), by counsel, hereby submits its initial comments on the Notice of Proposed Rulemaking (“NPRM”), FCC 03-13 (released March 13, 2003), in this docket.

**INTRODUCTION AND EXECUTIVE SUMMARY**

Western Wireless commends the Joint Board’s efforts in discharging its statutory responsibility to re-evaluate the definition of universal service in light of evolving changes in technology and the telecommunications marketplace. The Joint Board correctly concludes that there is no public interest need, and no legal basis, for expanding the existing list of supported services to include high-speed, advanced, or broadband services, a specific minimum local usage requirement, or other major changes to the existing definition. 1/

---

1/ *Federal-State Joint Board on Universal Service*, Recommended Decision, 17 FCC Rcd 14095, 14098-14121, ¶¶ 9-66 (Jt. Bd. 2002) (“*Recommended Decision*”). For further relevant discussion of these issues, see pages 5-10 of the Reply Comments of the Competitive Universal Service Coalition filed in this docket on January 4, 2002. The Reply Comments are appended as Attachment 2.

One of the more controversial issues in this proceeding is whether to adopt an equal access requirement, but the debate is not really about equal access. The real debate here is about whether universal service support can coexist with intermodal competition. The proponents of an equal access requirement would have the Commission restore the pre-1996 Act monopoly power of the incumbent local exchange carriers (“ILECs”) as the exclusive providers of universal service in most of rural America. Western Wireless and other opponents of the equal access requirement believe that the Commission must retain its existing, post-1996 Act policies giving *consumers* the power to choose whether to purchase supported service from ILECs, wireless carriers, or other competitive entrants.

At this point, there can be no turning back. The Act requires that the Commission maintain its principled position in favor of *both* competition and universal service. Universal service policy should not artificially promote uneconomic competition, but neither should it be used as an artificial barrier to economically efficient competition. 2/ Yet equal access proponents would impose a requirement that confers *no* benefits on consumers, at the cost of effectively precluding consumers from purchasing supported universal service from wireless carriers. As we show below, and as further demonstrated in the attached economic analysis by Professors William R. Meyer and Steve G. Parsons, consumers in rural and high-cost areas receive substantially greater benefits from the availability of universal service from wireless carriers as well as ILECs, than they would receive

---

2/ Remarks of Commissioner Jonathan S. Adelstein to NTCA, Feb. 3, 2003, at 3.

from an equal access requirement. Moreover, an equal access requirement would violate the principle of competitive and technological neutrality and does not satisfy the statutory criteria of Section 254(c)(1); and imposing an equal access requirement on mobile wireless carriers would violate Section 332(c)(8) of the Act.

## **I. ADDING AN EQUAL ACCESS REQUIREMENT IN THE UNIVERSAL SERVICE DEFINITION WOULD HARM CONSUMERS**

The purpose of universal service, promoting consumers' access to public switched networks in high-cost and rural areas, would not be furthered in any way by the inclusion of equal access as an Eligible Telecommunications Carrier ("ETC") prerequisite. To the contrary, consumers would be harmed if equal access were added to the universal service definition. An equal access requirement would impose such significant costs (*e.g.*, order management, activations, usage rating, customer care, technical support, and reporting) on wireless carriers that it effectively would impair them from competing to provide universal service in most circumstances. Therefore, in most areas, such a requirement would deprive rural consumers of the choice of an alternative universal service provider. It is important to note that in May of 2002, staff of the Commission's Consumer and Governmental Affairs Bureau indicated to Western Wireless that consumer complaints against wireless service providers for failure to offer choice of a long distance provider were non-existent.

Moreover, consumers would be harmed because an equal access requirement would significantly impair (effectively would preclude) wireless carriers' ability to offer consumers the popular calling plans that incorporate

bundled local and long distance minutes at low rates as part of a supported universal service offering. This is so because such requirements would deprive the commercial mobile radio service (“CMRS”) provider of the ability to negotiate an advantageous long-distance arrangement that enables it to offer economical bundled local and long distance calling plans. In addition, equal access would be administratively difficult or impossible to implement in the wireless context, since there is no accepted definition of which wireless calls are “local” and which are “long distance.” 3/

Attached to these comments is a report entitled “An Economic Evaluation of the Possible Modifications to the Definition of Supported Universal Service,” prepared by Professor William R. Meyer and Professor Steve G. Parsons. Professors Meyer and Parsons demonstrate that imposing equal access requirements would be economically inefficient and would disserve the public interest:

- The economic efficiency – *i.e.*, the overall benefit to society – of a universal service requirement can be evaluated by whether it minimizes distortions in consumers’ purchasing decisions in a free market (as well as minimizing distortions in service providers’ choices of production process or technology).
- A requirement that a service or functionality be included in the definition of universal service is economically inefficient if such a

---

3/ To the benefit of consumers, different carriers and different plans contain different definitions. The Commission has recognized that wireless carriers’ definitions of which calls are “local” vary significantly from definitions employed by the ILECs and by state regulators. *See, e.g., Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, ¶¶ 1043-44 (1996), *subsequent history omitted*. An equal access requirement would necessitate an FCC determination of which CMRS calls are “local” and which calls are “long distance.” There is no consumer benefit that would justify this costly and burdensome administrative exercise.

requirement prevents consumers from substituting away that service or functionality, without offsetting public interest benefit. Thus, if consumers are willing to forgo purchasing a specified service at a particular price, then that service should not be included in the universal service definition (*i.e.*, consumers should not be forced to purchase it) unless there is a benefit that outweighs that cost.

- Using this evaluative methodology, “equal access” fails to satisfy the economic efficiency criterion. Consumers do not demand equal access at all. Rather, equal access was imposed to preclude monopoly ILECs from impeding the emergence of competition in the long-distance marketplace. Long-distance competition is now mature.
- Equal access requirements preclude consumers from benefiting from the aggregation of their long-distance traffic and purchasing power (through the universal service provider) to obtain the best possible long-distance prices and service quality.
- Given the substantial costs that wireless carriers would face to implement equal access, a requirement would deter many of them from seeking or retaining status as universal service providers. This would deprive consumers of the benefits of wireless universal service, including: (1) mobility; (2) ability to communicate over a broader range of times and locations; (3) wider local calling scopes; (4) the potential for lower overall rates; and (5) more responsive customer service.
- In the great majority of instances, the customer who places a high value on choosing a long distance carrier may still do so through the choice of the ILEC. However, this does not appear to be empirically important since a growing proportion of customers use wireless service in order to take advantage of the bundle of local and long distance minutes and the relatively low long distance price offered by the wireless provider.
- Equal access requirements also impose production inefficiencies, because they create an artificial bias in favor of using land-line technologies in rural areas rather than mobile wireless technologies, even though wireless technologies may well be less costly in certain rural areas.

Consistent with this analysis, four of the Joint Board members correctly reach the following conclusion:

[t]he addition of equal access as a required service for all ETCs would not serve the public interest because it would likely reduce competition in rural and high cost areas. Given the cost associated with deploying loops, CMRS carriers may provide a lower cost source of competition for local service in some rural and high cost areas. CMRS services may also provide benefits to consumers, such as buckets of minutes that may be used for local or long distance calling, that outweigh the lack of 1 + dialing to a presubscribed IXC. If equal access were added to the definition of supported services, CMRS carriers would be ineligible to receive universal service support unless they provided equal access and might choose not to provide services competitive with local exchange service in rural and high-cost areas. Thus, including equal access on the list of supported services might reduce consumer choice in rural and high-cost areas, while excluding equal access would not jeopardize consumers' continued access to their presubscribed long distance carrier of choice, because local exchange carriers are required to provide it. 4/

Moreover, Commissioner Abernathy's analysis in this regard is accurate:

I do not agree with the premise that imposing an equal access requirement on CMRS carriers would be beneficial for competition or consumers . . . [A]llowing wireless carriers to offer consumers innovative service packages including bundles of any-distance minutes promotes, rather than harms, consumer welfare. There can be little question that both the interexchange and mobile wireless markets are highly competitive, and that wireless carriers' innovative offerings have led to extensive intermodal competition. And if a wireless subscriber seeks to use the services of a particular IXC, she can presubscribe to that IXC over her landline phone and also can reach the IXC on a wireless phone on a dial-around basis. 5/

In sum, an equal access requirement would violate the public interest and would harm the interests of consumers in rural and high-cost areas.

---

4/     *Recommended Decision*, 17 FCC Rcd at 14123, ¶ 71.

5/     *Id.*, Separate Statement of Commissioner Abernathy, 17 FCC Rcd at 14133-34.



## II. ADDING EQUAL ACCESS TO THE DEFINITION WOULD VIOLATE THE PRINCIPLE OF COMPETITIVE NEUTRALITY

Under the current, competitively neutral rules, a consumer can choose between an ETC that offers equal access and an ETC that offers packaged local and long distance service. Adding equal access to the definition of universal service would unreasonably bias universal service policy against CMRS carriers, violating the principles of technological and competitive neutrality.

There is no basis for imposing requirements intended to remedy the ILECs' market power on competitive new entrants such as wireless providers, in a misguided attempt to achieve "regulatory parity." "Regulatory parity" is neither necessary to achieve competitive neutrality, nor is it appropriate. For this reason, the Commission properly rejected including equal access in the definition of universal service in 1997, expressly declining to impose "symmetrical" service obligations on all eligible carriers." 6/

Furthermore, other means exist to remedy any supposed "inequities" related to the lack of an equal access requirement placed on CMRS carriers. 7/ For

---

6/ *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8819-10, ¶¶ 78-79 (1997) ("*First Report and Order*"). The Commission aptly noted that the inclusion of equal access would "require [CMRS carriers] to provide equal access in order to receive universal service support . . . an outcome . . . contrary to the mandate of section 332(c)(8)." *Id.*, 12 FCC Rcd at 8819, ¶ 78. The Commission also stated that "competitive neutrality does not require that, in areas where incumbent LECs are required to offer equal access to interexchange service, other carriers receiving universal service support in that area should also be obligated to provide equal access." *Id.*, 12 FCC Rcd at 8819-20, ¶ 79.

7/ The rural ILECs' embedded cost-based high-cost support mechanisms do not include any recovery of equal access costs. Moreover, most of the rural ILECs completely finished recovering their equal access conversion costs long ago. *See Ex*

example, the Commission could modify the structure of the universal service program to better reflect the advent of competition. <sup>8/</sup> In the end, the Commission would better advance the interests of consumers by reducing the regulatory obligations of ILECs, rather than increasing the regulation of CMRS carriers and other competitive entrants. The Commission could accomplish this sensible alternative by phasing out equal access requirements for ILECs that face effective competition. This solution would require equal access only when it is necessary, as opposed to requiring it indiscriminately even in cases where it makes no sense. <sup>9/</sup>

### **III. THE ACT DOES NOT AUTHORIZE THE COMMISSION TO IMPOSE EQUAL ACCESS REQUIREMENTS ON WIRELESS CARRIERS**

#### **A. Equal Access Does Not Satisfy the Section 254(c)(1) Criteria for the Definition of Universal Service**

The criteria found in section 254(c)(1) do not support the addition of equal access. The Commission should reject the arguments offered by the rural ILECs to support adding equal access to the definition of universal service.

---

*Parte* Filing from David L. Sieradzki, counsel for the Competitive Universal Service Coalition, CC Docket No. 96-45 (submitted June 12, 2002).

<sup>8/</sup> Commissioner Abernathy is correct that the Commission's recently initiated competitive universal service proceeding is the appropriate forum to address broader issues relating to the relationship between universal service and competitive entry. *Recommended Decision*, Separate Statement of Commissioner Abernathy, 17 FCC Rcd at 14135.

<sup>9/</sup> See *2002 Biennial Review of the Telecommunications Regulations Within the Purview of the Wireline Competition Bureau*, WC Docket No. 02-313, Reply Comments of the Competitive Universal Service Coalition (filed November 4, 2002) at 6.

**1. Equal Access is Not Essential to Education, Public Health, or Public Safety**

Access to interexchange service is already included within the definition of universal service, and therefore, equal access is not required to promote the universal access to interexchange service. As four members of the Joint Board found, the “absence of an equal access requirement for all ETCs does not impair universal service.” <sup>10/</sup> Equal access is not necessary to facilitate access to long-distance. <sup>11/</sup> To the contrary, imposing an equal access requirement upon CMRS carriers will force them out of many markets and effectively preclude them from offering combined local/long-distance plans as part of supported universal service offerings, thus limiting consumers’ options for interexchange service as well as local service. Likewise, the importance and value of mobile wireless carriers’ provision of access to emergency services has been widely recognized. Thus, an equal access requirement is not essential to education, public health, or public safety, but could impair public health and safety by limiting rural consumers’ access to emergency service through mobile carriers.

---

<sup>10/</sup> *Recommended Decision*, 17 FCC Rcd at 14123-24, ¶ 73. Commissioner Abernathy has opined that because consumers are ensured of access to interexchange service under the current list of supported services, the issue of adding equal access has “little, if anything, to do with universal service.” *Id.*, Separate Statement of Commissioner Abernathy, 17 FCC Rcd at 14131-32.

<sup>11/</sup> *Contra, id.*, 17 FCC Rcd at 14125, ¶ 77 (view of four Joint Board members supporting equal access requirement).

**2. Equal Access has Not, Through the Operation of Market Choices by Customers, been Subscribed to by a Substantial Majority of Residential Customers**

Equal access does not meet the requirements of Section 254(c)(1)

because it is not a “service” that consumers have “opted” to purchase through “free market” decisions. Quite simply, equal access is not a “service” and therefore, consumers cannot “opt” to purchase it. Furthermore, even if it were a “service,” the rural ILECs’ argument that consumers are opting to subscribe to equal access “service” evidences a clear misunderstanding of the requirements of Section 254. Until recently, consumers had no choice but to subscribe to ILEC service, and therefore, the description by monopolists of their subscribership levels as indicative of consumer choice deserves as much credence as a dictatorship’s claim that its subjects’ fealty reflects a groundswell of popular support. And, as Commissioner Abernathy has noted, “to the extent that the deployment of equal access has been left to voluntary market choices – that is, in the wireless arena – it has neither been subscribed to by a substantial majority of consumers nor deployed by carriers.” 12/

**3. Implementing Equal Access is Not Consistent with the Public Interest, Convenience, and Necessity**

As acknowledged by the four members of the Joint Board opposing the addition of equal access, the inclusion of equal access within the definition of supported services would not serve the public interest because it would “reduce

---

12/ *Recommended Decision*, Separate Statement of Commissioner Abernathy, 17 FCC Rcd at 14134.

competition in rural and high cost areas.” <sup>13/</sup> These Commissioners’ well-reasoned views are supported by the attached economic analysis by Professors Meyer and Parsons, demonstrating that consumers benefit from the absence of an equal access requirement on wireless ETCs.

**B. Imposing Equal Access Requirements on Wireless Carriers is Contrary to the Mandate of Section 332(c)(8)**

As part of the 1996 Act, Congress adopted Section 332(c)(8), which states explicitly that CMRS providers “shall not be required to provide equal access.” <sup>14/</sup> As the Commission acknowledged in the *First Report and Order*, the addition of equal access to the definition of universal service would force wireless ETCs to provide equal access, and therefore would violate Congress’s clear legislative intent. <sup>15/</sup> Commissioner Abernathy cogently reasons that, “[b]ecause Congress wanted *both* to exempt CMRS carriers from equal access obligations *and* to promote competition in all telecommunications markets, the only reasonable conclusion is that making the provision of equal access a prerequisite to obtaining ETC status is fundamentally at odds with congressional intent.” <sup>16/</sup> The Commission cannot do indirectly – impose equal access on CMRS carriers through

---

<sup>13/</sup> *Recommended Decision*, 17 FCC Rcd at 14123, ¶ 71. The Joint Board concluded that the Commission should “consider the impact of adding a service to carriers’ eligibility for ETC status under the public interest criteria.” *Id.*, 17 FCC Rcd at 14098, ¶ 8.

<sup>14/</sup> *See* 47 U.S.C. § 332(c)(8).

<sup>15/</sup> *First Report and Order*, 12 FCC Rcd at 8819, ¶ 78.

<sup>16/</sup> *Id.*

the definition of universal service – that which the statute prohibits it from doing directly.

## CONCLUSION

In conclusion, the Commission should not include equal access within the definition of universal service.

Respectfully submitted,

WESTERN WIRELESS CORPORATION

Gene A. DeJordy  
Vice President of Regulatory Affairs  
WESTERN WIRELESS CORP.  
3650 131st Ave., S.E., Ste. 400  
Bellevue, WA 98006  
(425) 586-8700

By: /s/ Michele C. Farquhar  
Michele C. Farquhar  
David L. Sieradzki  
HOGAN & HARTSON LLP  
555 Thirteenth St., N.W.  
Washington, D.C. 20554  
(202) 637-5600

Mark Rubin  
Director of Federal Government  
Affairs  
WESTERN WIRELESS CORP.  
401 Ninth St., N.W., Ste. 550  
Washington, D.C. 20004  
(202) 654-5903

Its Counsel

April 14, 2003